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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2009-81

RICK ANDREW VANDYKE,
1220 Rosecrans Street #451
San Diego, CA 92106

A C C U S A T I O N

Registered Nurse License No. 677118

Respondent.

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

2. On or about April 5, 2006, the Board issued Registered Nurse License Number 677118 to Rick Andrew Vandyke ("Respondent"). Respondent's license will expire on October 31, 2009, unless renewed.

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1 against the licensee or to render a decision imposing discipline on the license. Under Code
2 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
3 years after the expiration.

4 8. Code section 2761 states, in pertinent part:

5 The board may take disciplinary action against a certified or licensed nurse
6 or deny an application for a certificate or license for any of the following:

7 (a) Unprofessional conduct, which includes, but is not limited to, the
8 following:

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9 (f) Conviction of a felony or of any offense substantially related to the
10 qualifications, functions, and duties of a registered nurse, in which event the
record of the conviction shall be conclusive evidence thereof. . .

11 9. Code section 2762 states, in pertinent part:

12 In addition to other acts constituting unprofessional conduct within
13 the meaning of this chapter [the Nursing Practice Act], it is unprofessional
conduct for a person licensed under this chapter to do any of the following:

14 (a) Obtain or possess in violation of law, or prescribe, or except
15 as directed by a licensed physician and surgeon, dentist, or podiatrist
administer to himself or herself, or furnish or administer to another, any
16 controlled substance as defined in Division 10 (commencing with Section
11000) of the Health and Safety Code or any dangerous drug or dangerous
17 device as defined in Section 4022.

18 (b) Use any controlled substance as defined in Division 10
(commencing with Section 11000) of the Health and Safety Code, or any
19 dangerous drug or dangerous device as defined in Section 4022, or alcoholic
beverages, to an extent or in a manner dangerous or injurious to himself or
20 herself, any other person, or the public or to the extent that such use impairs
his or her ability to conduct with safety to the public the practice authorized
21 by his or her license.

22 (c) Be convicted of a criminal offense involving the prescription,
consumption, or self-administration of any of the substances described in
23 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
record pertaining to, the substances described in subdivision (a) of this section, in
24 which event the record of the conviction is conclusive evidence thereof. . .

25 10. Code section 4022 states:

26 "Dangerous drug" or "dangerous device" means any drug or device unsafe
for self-use in humans or animals, and includes the following:

27 (a) Any drug that bears the legend: "Caution: federal law prohibits
28 dispensing without prescription," "Rx only," or words of similar import.

1 (b) Any device that bears the statement: "Caution: federal law restricts this
2 device to sale by or on the order of a -----," "Rx only," or words of similar
3 import, the blank to be filled in with the designation of the practitioner licensed to
4 use or order use of the device.

5 (c) Any other drug or device that by federal or state law can be lawfully
6 dispensed only on prescription or furnished pursuant to Section 4006.

7 11. Code section 4060 states:

8 No person shall possess any controlled substance, except that furnished to
9 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
11 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
12 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
13 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
14 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
15 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
16 This section shall not apply to the possession of any controlled substance by a
17 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
18 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
19 practitioner, or physician assistant, when in stock in containers correctly
20 labeled with the name and address of the supplier or producer.

21 Nothing in this section authorizes a certified nurse-midwife, a nurse
22 practitioner, a physician assistant, or a naturopathic doctor, to order his or
23 her own stock of dangerous drugs and devices.

24 12. Health and Safety (H&S) Code section 11173, subdivision (a), states, in
25 pertinent part:

26 No person shall obtain or attempt to obtain controlled substances, or
27 procure or attempt to procure the administration of or prescription for controlled
28 substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

13. California Code of Regulations, title 16, section 1444 states:

14 A conviction or act shall be considered to be substantially related to the
15 qualifications, functions or duties of a registered nurse if to a substantial degree it
16 evidences the present or potential unfitness of a registered nurse to practice in a
17 manner consistent with the public health, safety, or welfare.

14. California Code of Regulations, title 16, section 1445 states:

....

25 (b) When considering the suspension or revocation of a license on the
26 grounds that a registered nurse has been convicted of a crime, the board, in
27 evaluating the rehabilitation of such person and his/her eligibility for a license will
28 consider the following criteria:

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1 (1) Nature and severity of the act(s) or offense(s).

2 (2) Total criminal record.

3 (3) The time that has elapsed since commission of the act(s) or offense(s).

4 (4) Whether the licensee has complied with any terms of parole, probation,
5 restitution or any other sanctions lawfully imposed against the licensee.

6 (5) If applicable, evidence of expungement proceedings pursuant to
7 Section 1203.4 of the Penal Code.

8 (6) Evidence, if any, of rehabilitation submitted by the licensee.

9 COST RECOVERY

10 15. Code section 125.3 provides, in pertinent part, that the Board may request
11 the administrative law judge to direct a licentiate found to have committed a violation or
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
13 and enforcement of the case.

14 CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

15 16. "Ativan" is a brand name for the generic drug **lorazepam** and is a
16 Schedule IV controlled substance as designated by H&S Code section 11057, subdivision
17 (d)(16). Ativan is used to treat anxiety.

18 17. "Cyclobenzaprine" is a dangerous drug within the meaning of Code
19 section 4022, in that it requires a prescription under federal law. Cyclobenzaprine is a muscle
20 relaxant.

21 18. "Dilaudid" is a brand name for the generic drug **hydromorphone** and is a
22 Schedule II controlled substance as designated by H&S Code section 11055, subdivision
23 (b)(1)(K). Dilaudid is a semisynthetic opioid analgesic used for relieving moderate to severe
24 pain associated with cancer, heart attacks, surgeries and trauma.

25 19. "Equipoise" is a dangerous drug within the meaning of Code section 4022
26 in that it requires a prescription under federal law. Equipoise is an anabolic steroid.

27 20. "Gabapentin" is a dangerous drug within the meaning of Code section
28 4022 in that it requires a prescription under federal law. Gabapentin's brand name is **Neurontin**

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1 and it is a medication originally developed for the treatment of epilepsy but currently, it is widely
2 used to relieve pain.

3 21. **"Heparin"** is a dangerous drug within the meaning of Code section 4022
4 in that it requires a prescription under federal law. Heparin is used as a blood thinner.

5 22. **"Marijuana,"** also known as **cannabis**, is a Schedule I controlled
6 substance as designated by H&S Code section 11054, subdivision (d)(13).

7 23. **"Methamphetamine"** is a Schedule II controlled substance as designated
8 by H&S Code section 11055, subdivision (d)(2).

9 24. **"Metoclopramide"** is a dangerous drug within the meaning of Code
10 section 4022 in that it requires a prescription under federal law. Metoclopramide is used to treat
11 nausea and vomiting.

12 25. **"Morphine"** is a Schedule II controlled substance as designated by H&S
13 Code section 11055(b)(1)(M). Morphine acts directly on the central nervous system to relieve
14 pain.

15 26. **"Oxycodone,"** also known by the trade name **Oxycontin**, is a Schedule II
16 controlled substance as designated by H&S Code section 11055, subdivision (b)(1)(N), and a
17 dangerous drug pursuant to Code section 4022. Oxycodone is a synthetic analgesic used for
18 relieving moderate to moderately severe pain.

19 27. **"Prochlorperazine"** is a dangerous drug within the meaning of Code
20 section 4022 in that it requires a prescription under federal law. Prochlorperazine is used in the
21 treatment of nausea and vertigo.

22 28. **"Promethazine"** is a dangerous drug within the meaning of Code section
23 4022 in that it requires a prescription under federal law. Promethazine is an antagonist
24 antihistamine and antiemetic medication.

25 29. **"Vicodin"** is the brand name for **Hydrocodone** and is a compound
26 consisting of 5 mg hydrocodone bitartrate, also known as dihydrocodeinone, and 500 mg
27 acetaminophen per tablet, and is a Schedule III controlled substance as designated by H&S Code

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1 section 11056, subdivision (e)(4). Vicodin is a opioid analgesic used for relieving moderately
2 severe pain.

3 30. "Xanax" is the brand name for **Alprazolam** and is a Schedule IV
4 controlled substance as defined in H&S Code section 11057, subdivision (d)(1). Xanax is used
5 to treat anxiety disorders.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(April 8, 2008 Criminal Conviction for Possession of**
8 **Controlled Substances on March 14, 2008)**

9 31. Respondent is subject to disciplinary action pursuant to Code sections
10 2761, subdivision (f) and 490, in that he was convicted of a crime that is substantially related to
11 the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

12 a. On or about April 8, 2008, in the criminal proceeding titled, *People v. Rick*
13 *Vandyke* (San Diego Superior Court, Case No. CD212514), Respondent was convicted by the
14 Court on his plea of guilty to one felony count in violation of H&S Code section 11377,
15 subdivision (a) (possession of a controlled substance, to wit, methamphetamine) and one
16 misdemeanor count in violation of Vehicle Code section 23152, subdivision (a) (driving under
17 the influence of drugs, to wit, methamphetamine)¹.

18 b. On or about May 7, 2008, Respondent was sentenced to the custody of the
19 Sheriff for 365 days and placed on formal probation for 3 years, to expire May 6, 2011, and was
20 ordered to pay fines in the amount of \$1,526.00.

21 c. The facts and circumstances surrounding this offense are that on or about
22 March 14, 2008, at approximately 10:08 p.m., Respondent was observed to be slumped over the
23 wheel of his vehicle parked in front of the Autozone store for three hours. The Police were
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25 1. Respondent was originally charged with one felony count in violation of H&S Code section 11350,
26 subdivision (a) (possession of a controlled substance, to wit, Hydrocodone), one misdemeanor count in violation of
27 H&S Code section 11550, subdivision (a) (under the influence of a controlled substance), one misdemeanor count
28 in violation of H&S Code section 11364 (possession of paraphernalia used for narcotics), two misdemeanor counts
in violation of Penal Code section 529.5, subdivision (c) (false government document), and one misdemeanor
count in violation of H&S Code section 11375, subdivision (b)(2) (possession of a designated controlled
substance, to wit, Clonazepam); however, those charges were dismissed.

1 called and when they arrived, they found Respondent's vehicle engine was running, the windows
2 were rolled up and the lights were on. The police officers shined their flashlights on Respondent
3 to wake him up. Respondent could not tell the officers his name, his address or what he was
4 doing in the parking lot. As Respondent became more alert, he told the officers he thought he
5 passed out because he had not slept in two days and was very tired. A search of Respondent's
6 vehicle revealed methamphetamine, hydromorphone injection cartridges, Oxycontin, Vicodin, 2
7 bottles of promethazine, intravenous medical products, two glass narcotics pipes along with two
8 false IDs. Respondent told an officer that he had been using the controlled substances Marijuana,
9 methamphetamine, Xanax, and Oxycontin, for about four years. Special Agent J. Woo of the
10 San Diego Pharmaceutical Narcotic Enforcement Team took a statement from Respondent
11 wherein Respondent stated that he had taken all of the medications and medical supplies from his
12 place of employment and that he had used methamphetamine over the weekend. After receiving
13 Respondent's consent, Special Agent Woo conducted a search of Respondent's residence and
14 found, among other things, one vial containing metoclopramide, one vial containing equipoise,
15 seven blank prescriptions, multiple empty controlled substance vials, a glass pipe, and various
16 medical supplies.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Conviction Involving the Self-Administration of a Controlled Substance)**

19 32. Respondent is subject to disciplinary action pursuant to Code
20 section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code
21 section 2762, subdivision (c) in that on or about April 8, 2008, Respondent was convicted of a
22 criminal offense involving the self-administration of the controlled substance methamphetamine,
23 as set forth in paragraph 31 above.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Possession of Controlled Substances)**

26 33. Respondent is subject to disciplinary action pursuant to Code section
27 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section

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1 2762, subdivision (a), in that he illegally possessed controlled substances and dangerous drugs as
2 follows:

3 a. On August 14, 2006, and August 15, 2006, while employed by
4 RNNetwork Healthcare Staffing company as a traveling nurse and on assignment at UCSD
5 Medical Center, La Jolla, California (UCSD), Respondent obtained the controlled substances
6 hydromorphone, Ativan, Vicodin, and Oxycodone by fraud, deceit, misrepresentation, or
7 subterfuge, in violation of H & S Code section 11173, subdivision (a). Respondent withdrew
8 hydromorphone and Ativan for Patient "A" and Vicodin and Oxycodone for Patient "B" from the
9 medical center's PYXIS system (a computerized medication system). The quantities of the
10 medications removed were in excess of the doses ordered by the patients' physicians or there was
11 no physician's order for the medication. Further, Respondent failed to chart the administration or
12 wastage of the medications in the patients' Medication Summaries and/or Nursing Notes or
13 otherwise account for the disposition of the medications.

14 b. On February 22, 2007, at approximately 11:56 p.m., San Diego Police
15 Officers C. Leahy and L. Johnson were on patrol when they noticed Respondent sitting in his
16 vehicle in the parking lot of a park after closing. As he questioned Respondent, Officer Leahy
17 noted that Respondent appeared very lethargic, had a blank stare, and was slow to respond to
18 simple questions. Officer Leahy suspected Respondent to be under the influence of drugs or
19 alcohol. A search of Respondent's vehicle and person resulted in the discovery of two black
20 plastic bindles in his vest pocket that contained a white substance, suspected to be
21 methamphetamine, and a used hypodermic needle on the vehicle's floorboard. Respondent
22 stated to Officer Leahy that the "methamphetamine" found in his pocket did not belong to him.
23 Respondent was arrested for being under the influence of a controlled substance. A urine sample
24 obtained from Respondent produced positive results for the controlled substances
25 methamphetamine and morphine.

26 c. On or about March 14, 2008, Respondent obtained and possessed the
27 controlled substances hydrocodone, Oxycontin, cyclobenzaprine, gabapentin, Diphenhydramine,
28 prochlorperazine, metoclopramide, promethazine, and heparin by fraud, deceit,

misrepresentation, or subterfuge, in violation of H&S Code section 11173, subdivision (a). By Respondent's own admission, he took the medications from UCSD where he was employed. The circumstances are more specifically set forth in paragraph 31 above and incorporated herein.

FOURTH CAUSE FOR DISCIPLINE

(Illegal Administration of a Controlled Substance)

34. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that he illegally administered controlled substances to himself as follows:

a. On February 22, 2007, Respondent self-administered methamphetamine and morphine without lawful authority as more specifically set forth in paragraph 33(b) above.

b. On March 14, 2008, Respondent self-administered the controlled substance methamphetamine without lawful authority as more specifically set forth in paragraph 31 above.

c. In between April 5, 2006, and March 14, 2008, Respondent by his own admission, self-administered the controlled substances marijuana, methamphetamine, Xanax, and Oxycontin without lawful authority therefor, as more specifically set forth in paragraph 31 above.

FIFTH CAUSE FOR DISCIPLINE

(Use of Controlled Substances to an Extent or in a Manner Dangerous or Injurious to Onself or Others)

35. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (b), in that he used controlled substances to an extent or in a manner dangerous or injurious to oneself as follows:

a. On or about February 22, 2007, Respondent was under the influence of methamphetamine and morphine while in his vehicle as more particularly set forth in paragraph 33(b). Respondent used controlled substances in a manner dangerous or injurious to himself and others in that he was operating a vehicle while under the influence of controlled substances.

b. On or about March 14, 2008, Respondent was under the influence of methamphetamine while in his vehicle with the engine running as more particularly set forth in paragraph 31. Respondent used a controlled substance in a manner dangerous or injurious to himself and others in that he was operating a vehicle while under the influence of a controlled substance.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 677118, issued to Rick Andrew Vandyke;

2. Ordering Rick Andrew Vandyke to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 10/6/08

Ruth Ann Terry
RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant